Supreme Court, U.S.
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No. 90-1284

IN THE

Supreme Court of the United States

OCTOBER TERM, 1990

INTERCONTINENTAL LIFE INSURANCE COMPANY,
Petitioner,

v.

LOU R. LINDBLOM,
Respondent.

On Petition for Writ of Certiorari to the Supreme Court of Alabama

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RESPONDENT'S BRIEF IN OPPOSITION

DAVID H. MARSH
PITTMAN, HOOKS, MARSH, DUTTON & HOLLIS, P.C.
800 Park Place Tower
2001 Park Place North
Birmingham, Alabama 35203
(205) 322-8880
Counsel for Respondent Lou R. Lindblom

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

QUESTION PRESENTED

Whether this Court should review a due process challenge to the imposition of punitive damages in an Alabama case in which the award was subject to the same array of procedural protections reviewed and approved by this Court in *Pacific Mutual Life Insurance Co. v. Haslip*, —— U.S. —— (1991), and where the Supreme Court of Alabama, in applying those protections, reduced the jury award by over $2 million dollars (more than two-thirds of the verdict).

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STATEMENT OF THE CASE

Petitioner InterContinental Life's statement of the case omits crucial facts. A closer review of the factual record, the jury charge given, and the standards applied by the trial court and Alabama Supreme Court makes clear that the punitive damage award in this case does not violate the Due Process Clause.

A. Factual Background.

Respondent, Lou R. Lindblom, adopts the statement of the case and statement of the facts set forth in the opinion issued in this case by the Alabama Supreme Court. Brief for Petitioner, App., at 1a-19a. In addition, respondent states the following facts.

On December 1, 1980, InterContinental issued a $10,000 life insurance policy to Tommie L. Rodenberry, designating Rodenberry's daughter, Lou R. Lindblom, the respondent herein, as the beneficiary. Brief for Petitioner, App., at 2a. Under the payment plan that was selected, payments were due on a quarterly basis, with the first payment due on December 1, 1980. *Id.* On January 1, 1984, Ms. Lindblom, who handled the payments on her mother's policy, wrote to InterContinental asking it to switch the payment schedule from quarterly to monthly, as the policy permitted. Brief for Petitioner, App., at 3a. Togther with that request, Ms. Lindblom included a payment designated for the December, 1983, premium. She also asked to be billed monthly for the policy and requested that InterContinental bill her for the January, 1984, premium. *Id.* InterContinental never replied to this letter and never sent a notice for the Jauary, 1984, payment. Tr. 101. On February 2, 1984, Ms. Lindblom mailed another payment to InterContinental, Tr. 103, which Ms. Lindblom testified was intended to cover the payment due February 1. Tr. 155. InterContinental made a unilateral decision to "back-apply" the February 2 check to cover the January premium for which InterContinental had never sent a notice. Brief for Petitioner, App., at 3a. It was at that point in time—January, 1984—some 22 months prior to the death of Tommie Rodenberry, that the problem, which led to InterContinental's eventual denial, began. Simply stated, because she was never billed, Ms. Lindblom did not remit the January, 1984, premium payment. Tr. 87-88.

Each month thereafter, from February 1, 1984, through October, 1985, Ms. Lindblom remitted a payment payable to InterContinental early each month. Tr. 86, 88, 89, 102-09. No fewer than three of InterContinental's employees admitted during the trial that every one of these 20 monthly payments was accepted by InterContinental outside of the written 31-day grace period

contained in the policy, Tr. 207, 528, 606, because InterContinental had decided to continuously back apply these payments to cover the missed January, 1984, payment. Brief for Petitioner, App., at 3a. Ms. Donna Faulkner, one of two InterContinental employees involved in the claim denial, admitted that Ms. Rodenberry's policy technically lapsed each and every month beginning in December, 1983. Tr. 427, 608.[1] During this time, InterContinental contacted Ms. Lindblom on at least two occasions to inform her of premium increases. At no time did InterContinental inform her that she had missed the January, 1984, payment, that her payments were routinely received outside the 31-day grace period, or that the policy was in a continual state of lapse. Brief for Petitioner, App., at 3a-4a; Tr. 119, 299-300, 609-10, 614-17.[2]

InterContinental introduced evidence at trial that in addition to the written 31-day grace period, it voluntarily granted an extended two week (14-day) grace period, making the total grace period 45 days. Brief for Petitioner, App., at 2a-3a. This "extra" grace period was not included in the insurance contract, and InterContinental never informed Ms. Lindblom of its existence. *Id.* at 3a. InterContinental has incorrectly suggested to this Court that no payments were ever accepted on the policy at issue outside of the 14-day "extra" grace period.[3] But in fact, at least three premium payments were accepted by InterContinental outside of the additional 14-day "ex-

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[1] Ms. Faulkner agreed that, between January, 1984, and October, 1985, InterContinental could accept the premium payments and retain the right to deny payment of benefits in the event of Tommie Rodenberry's death. Tr. 608.

[2] Failure to provide such "pre-lapse" notification was a violation of InterContinental's own procedures. Tr. 527-28.

[3] *See* Brief for Petitioner, at 5.

tra" grace period prior to the death of Tommie Rodenberry. Tr. 213-15, 219, 264-66, 273, 409-10, 425, 472, 491, 493-94, 496, 513, 532. Payments were accepted by InterContinental outside of both the written and "unwritten" grace periods in January, 1984; April, 1984; and July, 1984. Tr. 213-15. At no time did InterContinental require reapplication or completion of any written forms, including medical information, to reinstate the policy.

InterContinental continued its practice of back applying Ms. Lindblom's payments through August, 1985, when problems began to develop. Brief for Petitioner, App., at 4a. When InterContinental received a check dated August 5, 1985, the company applied it toward the July, 1985, premium. *Id.* When InterContinental received the next check, dated September 15, 1985, it treated this check as the payment of the August, 1985, premium. *Id.* In early October, 1985, Ms. Lindblom, who was still unaware of the problem, sent yet another payment to InterContinental. *Id.* On October 11, 1985, InterContinental wrote Ms. Lindblom and informed her that the policy had lapsed. *Id.* Ms. Lindblom, believing that she was current on the policy and not understanding how it had lapsed, contacted Mr. Culver at the Culver Agency about the problem.[4] Ms. Lindblom presented Mr. Culver with copies of the cancelled checks for the August and September, 1985, premium payments. *Id.* Mr. Culver told Ms. Lindblom that he would take care of the problem and instructed Ms. Lindblom to send him a copy of the cancelled October, 1985, premium check when she received it from her bank. *Id.* Later, when Mr. Culver received this check and spoke with Ms. Lindblom, he informed her that the policy was still in force. *Id.*

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[4] Culver was an InterContinental agent from whom Ms. Lindblom had purchased the policy at issue. Tr. 387-88, 390.

On October 23, 1985, Tommie Rodenberry died. Ms. Lindblom filed a claim with InterContinental for the death benefits under the policy. Brief for Petitioner, App., at 4a. InterContinental informed Ms. Lindblom that benefits could not be paid because the policy had lapsed as of August 1, 1985, due to non-payment of premiums. *Id.* at 5a. At this point, InterContinental did not refund any premiums paid after the alleged lapse. *Id.* In fact, InterContinental had continued to cash Ms. Lindblom's premium payment checks after August 1, 1985.[5] Tr. 125, 142. The Culver Agency contacted InterContinental on several occasions and sent InterContinental copies of the cancelled checks for Ms. Lindblom's August, September, and October payments. *Id.* InterContinental nevertheless continued to refuse to pay the benefits. *Id.* InterContinental eventually refunded the amount of two payments ($71.64) received after the alleged lapse. *Id.* This refund was forwarded more than 90 days after InterContinental sent its "lapse notice" (October 11, 1985) and more than five months after InterContinental claimed the policy had lapsed (August, 1985). Tr. 125, 142.

B. The Jury Verdict.

The jury was charged that it could award compensatory damages for both out-of-pocket economic loss and mental anguish. Tr. 831. The jury was also instructed that could award punitive damages. The jury returned a verdict for the respondent in the amount of $3,012,400. Because this was a general verdict, the extent to which the award represented compensation for mental anguish and the extent to which it represented punitive damages cannot be determined with certainty.

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[5] One check was cashed by InterContinental on October 21, 1985, two days before the death of Tommie Rodenberry. Plaintiff's Exhibit 26.

C. Review by the Alabama Courts.

The trial court carefully reviewed the jury damage award. In particular, the court applied the standards and followed the procedures set forth by the Alabama Supreme Court in *Hammond v. City of Gadsden*, 493 So. 2d 1374 (Ala. 1986) and *Green Oil Co. v. Hornsby*, 539 So. 2d 218 (Ala. 1989), in determining whether the award was appropriate. In conformity with Alabama law, the court held a hearing, considered the relevant substantive criteria identified by the Alabama Supreme Court, and set forth in great detail its reasons for upholding the award. Brief for Petitioner, App., at 20a-26a. The trial court noted "the expert, and uncontradicted testimony . . . that there was no legitimate basis for denying the claim involved in this case and that defendant's actions in reviewing and refusing to pay the claim at issue were in violation of accepted procedures and practices in the insurance industry." It found that "the evidence presented" was "sufficient to establish" that petitioner's actions "were against recognized and accepted insurance industry standards." Brief for Petitioner, App., at 22a-23a. The trial court also noted that the testimony of petitioner's witnesses was "evasive and inconsistent" and that the petitioner "deliberately or recklessly suppressed material facts from the plaintiff prior to the death of Tommie Rodenberry; and, this court is reasonably satisfied that the insurance company had no legitimate basis for denying the claim made the basis of this suit." *Id.* at 23a.

The Alabama Supreme Court found that the trial court had conducted a "careful" *Hammond* review and found the jury's punitive award to have been appropriate under the *Hammond/Hornsby* standards. Brief for Petitioner, App., at 15a. Nevertheless, Alabama law gives parties challenging punitive awards a third level of protection. In addition to applying *Hammond* and *Hornsby* the Alabama Supreme Court also conducts a "comparability re-

view" in order to ensure that the award is not disproportionate to punitive awards in similar cases. Brief for Petitioner, App., at 16a. After "a thorough examination of the record in this case and a comparison of verdicts in similar cases that have come before this court," the Alabama Supreme Court decided to reduce the jury award from $3,012,400 to $1,000,000, a reduction of over $2,000,000 (more than two-thirds of the verdict). *Id.*

REASONS FOR DENYING THE WRIT

The questions presented in this case are identical to those decided by the Court in *Pacific Mutual Life Insurance Co. v. Haslip*, —— U.S. —— (1991). Accordingly, the Court should deny the petition in this case in light of its decision in *Haslip*. The Alabama law applied in this case did not permit awards of punitive damages in the "unbridled discretion" of the jury nor—as the Alabama Supreme Court found applying strict state law standards—was the punitive damage award, as reduced, excessive or disproportionate. Therefore, petitioner is erroneous in its contention that the punitive award violated due process. The very same procedural safeguards that were reviewed and approved by the Court in *Haslip* —adequate jury instructions, a thorough post-verdict hearing by the trial court, and appropriate review by the Alabama State Supreme Court—were utilized in this case. Furthermore, this case demonstrates that the Alabama system works as evidenced by the substantial reduction of the award by the Alabama Supreme Court.[6]

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[6] The legal standards applied in this case, and approved by the Court in *Haslip*, have been superseded by a legislative enactment. Specifically, in 1987, Alabama enacted tort reform legislation placing even greater substantive and procedural constraints on punitive awards. Ala. Code §§ 6-11-20 through 6-11-30. Although these legislative provisions do not apply to the present case, they have been in force in Alabama for more than two years and will govern all present and future actions raising punitive damages' claims like those at issue here. Thus, plenary review of this case is also inap-

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InterContinental's due process attack is twofold. First, InterContinental argues that the jury was not given any meaningful guidance regarding the standards to apply in fixing the amount of the punitive damage award.[7] The second question raised by InterContinental is whether "the amount of punitive damages in this case was excessive, in violation of [the insurance company's] due process right to be free of grossly excessive, disproportionate damage awards."[8] Petitioner admits that both questions presented in this case are "essentially identical" to those decided by the Court in *Haslip*.[9]

It is beyond cavil that InterContinental had the benefit of the same "full panoply of Alabama's procedural protections"[10] that were reviewed and approved by the Court in *Haslip*. InterContinental, in support of its "lack of meaningful guidance" argument, first attacks the jury instruction given. Yet even InterContinental admits that the jury instruction in this case is virtually identical to the instructions challenged in *Haslip*.[11] As in *Haslip*, the trial court expressly described for the jury the purpose of punitive damages, namely, "to allow money re-

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propriate because the Court would be reviewing a system for assessing punitive damages that no longer exists in Alabama or anywhere else.

[7] *See* Brief for Petitioner, at 8-9.

[8] *See* Brief for Petitioner, at 10.

[9] *See* Brief for Petitioner, at 8.

[10] *See* Pacific Mutual Life Insurance Co. v. Haslip, —— U.S. —— (slip op. 19).

[11] *See* Brief for Petitioner, at 9.

covery to the plaintiff by a way of punishment to the defendant" and "for the added purpose of protecting the public and others from doing such wrong in the future." Tr. 833-34; Brief for Petitioner, at 9. As in *Haslip*, any evidence of InterContinental's wealth was excluded from the trial in accordance with Alabama law. See *Southern Life and Health Ins. Co. v. Whitman*, 358 So. 2d 1025, 1026-1027 (Ala. 1978).

After a careful review of virtually identical instructions in *Haslip*, this Court stated:

> To be sure, the instructions gave the jury significant discretion in its determination of punitive damages. But that discretion was not unlimited. It was confined to deterrence and retribution, the state policy concerns sought to be advanced. And if punitive damages were to be awarded, the jury "must take into consideration the character and the degree of the wrong as shown by the evidence and necessity of preventing similar wrong." App. 106. The instructions thus enlighten the jury as to the punitive damages' nature and purpose, identified the damages as punishment for civil wrongdoing of the kind involved, and explained that their imposition was not compulsory.
>
> These instructions, we believe, reasonably accommodated Pacific Mutual's interest in rational decisionmaking and Alabama's interest in meaningful individualized assessment of appropriate deterrence and retribution. The discretion allowed under Alabama law in determining punitive damages is no greater than that pursued in many familiar areas of the law as, for example, deciding "the best interests of the child," or "reasonable care," or "due diligence" or appropriate compensation for pain and suffering or mental anguish. . . .

—— U.S., at —— (slip op. 16).

In light of *Haslip*, there can be no doubt that the jury instruction in this case provided adequate standards for

the jury to apply in selecting the amount of the penalty. Therefore, due process is satisfied.

As in *Haslip*, the trial court here conducted a post-verdict hearing that conformed with *Hammond v. City of Gadsden*, 493 So. 2d 1374 (Ala.), which sets forth standards that ensure meaningful and adequate review of punitive awards. In *Haslip*, this Court reviewed the *Hammond* test and found it to ensure "meaningful and adequate review by the trial court whenever a jury has fixed the punitive damages." *Haslip, supra* at —— (slip op. 17). This Court stated:

> Before the trial in this case took place, the Supreme Court of Alabama had established post-trial procedures for scrutinizing punitive awards. In *Hammond v. City of Gadsden*, 493 So. 2d 1374 (1986), it stated that trial courts are "to reflect in the record the reasons for interfering with a jury verdict, or refusing to do so, on grounds of excessiveness of the damages." Among the factors deemed "appropriate for the trial court's consideration" are the "culpability of the defendant's conduct," the desirability of discouraging others from a similar conduct," the "impact upon the parties," and "other factors, such as the impact on innocent third parties." The *Hammond* test ensures meaningful and adequate review by the trial court whenever a jury has fixed the punitive damages.

Id., (citations omitted).

Subsequent to *Hammond* but prior to appeliate review of the verdict at issue here, the Alabama Supreme Court had elaborated and refined the *Hammond* criteria for determining whether a puntive award is reasonably related to the goals of deterrence and retribution. It was established that the following could be taken into consideration in determining whether the award was excessive:

> "[1] Punitive damages should bear a reasonable relation to the harm that is likely to occur from the

defendant's conduct as well as the harm that actually has occurred. If the actual or likely harm is slight, the damages should be relatively small. If grievous, the damages should be much greater.

"[2] The degree of reprehensibility of the defendant's conduct should be considered. The duration of this conduct, the degree of the defendant's awareness of any hazard which his conduct has caused or is likely to cause, and any concealment or cover-up of that hazard, and the existence and frequency of similar past conduct should be relevant in determining this degree of responsibility.

"[3] If the wrongful conduct was profitable to the defendant, the punitive damages should remove the profit and should be in excess of this profit, so that the defendant recognizes a loss.

"[4] The financial position of the defendant would be relevant.

"[5] All the costs of litigation should be included, so as to encourage plaintiffs to bring wrongdoers to trial.

"[6] If criminal sanctions have been imposed on the defendant for his conduct, this should be taken into account in mitigation of the punitive damages award.

"[7] If there have been other civil actions against the same defendant, based on the same conduct, this should be taken into account in mitigation of the punitive damages award."

Green Oil Co. v. Hornsby, 539 So. 2d at 223-224 (quoting *Aetna Life Insurance Co. v. Lavole*, 505 So. 2d 1050, 1062 (Ala. 1987) (Houston, J., concurring specially)). The standards set forth in *Hornsby* governed the Alabama Supreme Court's decision in this case. Also, the Alabama Supreme Court routinely conducts a comparative proportionality review to ensure a consistency across the range of cases. *See Aetna Insurance Co. v. Lavoie*, 505 So. 2d

at 1053 (1987). After undertaking such a comparative analysis in this case, the Alabama Supreme Court decided to reduce the jury award from $3,012,400 to $1,000,000.[12] Brief for Petitioner, App., at 16a. Petitioner must concede that the cumulative result of Alabama's system is an award that is comparable to awards in similar cases.

This Court in *Haslip* observed that:

> "This appellate review makes certain that the punitive damages are reasonable in their amount and rational in light of their purpose to punish what has occurred and to deter its repetition. . . . The application of these standards, we conclude, imposes a sufficiently definite and meaningful constraint on the discretion of Alabama fact finders in awarding punitive damages. The Alabama Supreme Court's post-verdict review ensures that punitive damages awards are not grossly out of proportion to the severity of the offense and have some relationship to compensatory damages. . . . These standards have real effect when applied by the Alabama Supreme Court to jury awards." —— U.S. at ——.

There can be no doubt, therefore, that InterContinental had the full benefit of procedural due process in this case, for the reasons set forth by this Court in *Haslip*.

InterContinental also argues that the award violated substantive due process, in that the penalty assertedly bears no reasonable relationship to its misconduct. In so arguing, InterContinental places great emphasis on the fact that the award in this case is nearly 80 times the compensatory damages awarded to Ms. Lindblom. Brief for Petitioner, at 12. This argument is based upon the incorrect assumption that the punitive component of the

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[12] Obviously, this type of comparability review could not be conducted by juries, because they will know nothing about awards in similar cases. Responded did not attempt to present evidence of awards in similar cases to the jury, because that evidence could have been highly prejudicial to the petitioner.

jury award can be ascertained.[13] But to the contrary, as in *Haslip*, the verdict here was a general one and could have included a significant share of compensatory damages for pain and suffering. There is simply no way to be certain in *what* ratio the jury awarded compensatory and punitive damages here. The relationship between *out-of-pocket* damages and punitive damages is actually closer here than in *Haslip*; punitive damages awarded in *Haslip* were more than 200 times the out-of-pocket expenses incurred, whereas the ratio in this case is just 80 to 1. There is plainly no basis upon which to find this award "jar[s] one's constitutional sensibilities" under the analysis set forth in *Haslip*.[14]

InterContinental seeks to portray the conduct that harmed respondent as a mere oversight as opposed to some higher degree of wrongdoing.[15] This is a fact-bound attempt to re-litigate the case in this Court. In fact, this case involves deliberate fraud and bad faith carried out by InterContinental in the name of profit. The Alabama Court found the evidence in support of the bad faith claim so "overwhelming" that respondent "would have been entitled to a directed verdict." Brief for Petitioner, App., at 10a.[16] The Alabama Supreme Court found there was ample evidence to support the jury's verdict on *four* separate grounds: "for bad faith failure to pay insurance

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[13] See Section B. The Jury Verdict, *supra*.

[14] —— U.S. at ——. InterContinental also pleads that the penalty in this case is much greater than the criminal and civil fines enacted by the Alabama legislature. *See* Brief for Petitioner, at 11. This position was also taken by the petitioner in *Haslip* and rejected by the Court in part because "imprisonment . . . could also be required of an individual in the criminal context." —— U.S. at ——.

[15] *See* Brief for Petitioner, at 12-13.

[16] The court found, for example, that petitioner "intentionally failed to investigate whether there was a valid reason to deny the claim" and "InterContinental had no legal justification for refusing to pay the claim." *Id.*

benefits, breach of contract, misrepresentation, and fraud". Brief for Petitioner, App., at 9a, 10a, 14a.[17] In short, the award here is justified by the nature of Inter-Continental's conduct, and there is no reason for this Court to reconsider factual findings made by two levels of Alabama courts. Nor is there any reason for this Court to second-guess the Alabama Supreme Court's judgment, applying the factors approved in *Haslip*, that the award in this case was appropriate.

CONCLUSION

For all the foregoing reasons, the Petition for Certiorari should be denied.

Respectfully submitted,

DAVID H. MARSH
PITTMAN, HOOKS, MARSH,
DUTTON & HOLLIS, P.C.
800 Park Place Tower
2001 Park Place North
Birmingham, Alabama 35203
(205) 322-8880
Counsel for Respondent
Lou R. Lindblom

[17] The court found, for example, that "[c]ontrary to Inter-Continental's interpretation of the facts, the record contains numerous examples of misrepresentations to Ms. Lindblom." *Id.*, at 14a.